

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

USGEN NEW ENGLAND, INC.,)

Plaintiff,)

vs.)

MICHAEL O. LEAVITT,)
in his capacity as Administrator)
of the U.S. Environmental Protection)
Agency, et al.,)

Defendants.)

No. 04-12225 (RCL)

MOTION TO DISMISS

Defendants Michael O. Leavitt, Administrator of the U.S. Environmental Protection Agency, the U.S. Environmental Protection Agency ("EPA"), and Region One of the EPA respectfully move this Court pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the Complaint of Plaintiff USGen New England, Inc. for lack of subject matter jurisdiction and for failure to state a claim, for the reasons discussed in the accompanying Memorandum in Support of Motion to Dismiss. The parties have conferred regarding this Motion, and Defendants have expressed their intention to oppose it.

REQUEST FOR ORAL ARGUMENT

The Defendants hereby request oral argument pursuant to Local Rule 7.1(d).

Respectfully submitted,

Dated: December 27, 2004

By: 

HEATHER E. GANGE

U.S. Dept. of Justice

Environment and Natural Resources

Division

Environmental Defense Section

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LEAVITT, Administrator; UNITED
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PROTECTION AGENCY; and REGION
ONE of the UNITED STATES
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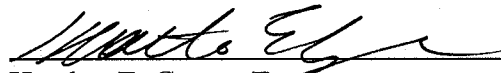
CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion to Dismiss, and Memorandum in Support of Motion to Dismiss, were today served, this 27th day of December, 2004, via first class mail, on counsel listed below:

Wendy B. Jacobs
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Heather E. Gange, Esq.